

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

WALTER HOLMES,

Plaintiff,

v.

JOE HOWARD; STEVE ZADACH;
and CLYDE FITZGERALD,

Defendants.

CIVIL ACTION NO.: CV209-176

ORDER

On December 1, 2009, Magistrate Judge James E. Graham entered an Order denying Plaintiff's Motion to Proceed *in forma pauperis* and a Report recommending dismissal of Plaintiff's claims in their entirety. Presently before the Court is a "Motion for Reconsideration", which the Clerk has construed as Plaintiff's objections to the report and recommendation. In his filing, Plaintiff seeks reconsideration of the denial of his Motion to Proceed *in forma pauperis*. Alternatively, Plaintiff asks that he be allowed to join as a plaintiff in Collins, et al., v. Zadach, et al., CV209-093.

As set out by the Magistrate Judge, if Plaintiff desires to proceed pursuant to 42 U.S.C. § 2000e, alleging employment discrimination, he must first file a complaint with the U. S. Equal Employment Opportunity Commission. The filing of a complaint with the EEOC and the receipt of a right-to-sue letter is not a jurisdictional prerequisite, but rather a condition precedent, which on proper occasion may be equitably modified. Id. at 1216; Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393, 102 S. Ct. 1127, 1132, 71 L. Ed. 2d 234 (1982); Forehand v. Florida State Hospital at Chattahoochee, 839 F.Supp. 807, 814 (N.D. Fla. 1993); Jackson v. Seaboard Coast Line Railroad Co., 678 F.2d 992 (11th Cir. 1982). In the case *sub judice*, Plaintiff has not filed such a complaint with the EEOC as required. That portion

of Plaintiff's filing seeking reconsideration of his Motion to Proceed *in forma pauperis* is **DENIED**. Plaintiff's alternative motion to join as a plaintiff in Case No. CV209-093 is also **denied** as that case was closed by Order dated December 3, 2009. Accordingly, the Report and Recommendation of the Magistrate Judge, as herein supplemented, is adopted as the opinion of the Court. The Clerk of Court is hereby authorized and directed to enter an appropriate Judgment.

SO ORDERED, this 14 day of January, 2010.



HONORABLE LISA GOBBEY WOOD
UNITED STATES DISTRICT JUDGE